

Introduced by Senator Speier

February 21, 2003

An act to amend Sections 17550.4, 17550.13, 17550.20, 17550.21, 17550.47 of the Business and Professions Code, relating to sellers of travel.

LEGISLATIVE COUNSEL'S DIGEST

SB 736, as introduced, Speier. Sellers of travel.

Existing law provides a comprehensive scheme for the regulation of sellers of travel that is to be terminated on January 1, 2006. Under these provisions, sellers of travel are required, unless exempted, to register with the Attorney General and to comply with various requirements. Upon termination of these provisions, certain other provisions governing travel promoters become effective. Existing law also creates the Travel Consumer Restitution Corporation as a nonprofit mutual benefit corporation, which administers funds obtained from assessments on sellers of travel for distribution to aggrieved consumers. A violation of the provisions governing sellers of travel is a crime.

This bill would make various revisions to the provisions governing sellers of travel and the Travel Consumer Restitution Corporation, relative to the definition of an air carrier, late payment of fees, disclosure requirements, appeals of decisions of the corporation, and various other matters. Because the bill would change the definition of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17550.4 of the Business and Professions
2 Code is amended to read:
3 17550.4. An air carrier is a transporter by air of persons that
4 operates under a certificate of convenience and necessity issued by
5 the United States Department of Transportation *or under the*
6 *certification of a foreign government that is recognized by the*
7 *United States Department of Transportation.*
8 SEC. 2. Section 17550.13 of the Business and Professions
9 Code is amended to read:
10 17550.13. (a) A seller of travel shall not receive any money
11 or other valuable consideration in payment for air or sea
12 transportation or other travel services offered by the seller of travel
13 unless at the time of or prior to the receipt of payment the seller of
14 travel first furnishes to the person making that payment written
15 materials conspicuously setting forth the following information:
16 (1) The name and business address and telephone number of
17 the seller of travel.
18 (2) The total amount to be paid by or on behalf of the passenger,
19 amount paid to date, the date of any future payment, the purpose
20 of the payment made, and an itemized statement of the balance
21 due, if any.
22 (3) The name of the provider of the air or sea transportation,
23 and the date, time, and place of each departure, or the
24 circumstances under which the date, time, and place of departure
25 will be determined.
26 (4) All terms and conditions relating to the air or sea
27 transportation or travel services being purchased by the passenger,
28 including cancellation conditions. An air carrier's or an ocean
29 carrier's standard contract of carriage is not required to be
30 disclosed prior to the seller of travel receiving any money or other
31 valuable consideration.
32 There is no violation of this subdivision if both of the following
33 occur:



1 (A) Compliance was rendered impossible as a direct result of
2 an unforeseen condition beyond the control of the seller of travel.

3 (B) The seller of travel obtains from each passenger written
4 acknowledgment that the passenger has not received disclosure of
5 the terms and conditions required by this section.

6 (5) A clear and conspicuous statement that upon cancellation
7 of the transportation or travel services, where the passenger is not
8 at fault and has not canceled in violation of any terms and
9 conditions previously clearly and conspicuously disclosed to and
10 agreed to by the passenger, all sums paid to the seller of travel for
11 services not provided will be promptly paid to the passenger,
12 unless the passenger otherwise advises the seller of travel in
13 writing, after cancellation.

14 (6) If the seller of travel is required by this article to have a trust
15 account or bond, a clear and conspicuous disclosure stating:
16 “California law requires certain sellers of travel to have a trust
17 account or bond. This business has [a trust account] or [a bond
18 issued by (company) in the amount of (\$X)].”

19 (7) If the seller of travel is a participant in the Travel Consumer
20 Restitution Fund *and the passenger was located in California at*
21 *the time of the sale of air or sea transportation or travel services,*
22 a clear and conspicuous notice of the passenger’s right to make a
23 claim on that fund. The notice shall include a description of the
24 losses covered, the method for making a claim, the time limit
25 within which the claim shall be made, and the amount which may
26 be claimed.

27 (8) If the seller of travel is a participant in a Consumer
28 Protection Deposit Plan that meets the criteria set forth in
29 subdivision (b) of Section 17550.16, a clear and conspicuous
30 notice of the passenger’s right to make a claim on the plan. That
31 notice shall include a description of the losses covered, the method
32 for making a claim, the time limit within which the claim shall be
33 made, and the amount which may be claimed.

34 (9) If the seller of travel is a participant in a Consumer
35 Protection Escrow Plan that meets the criteria set forth in
36 subdivision (c) of Section 17550.16, a clear and conspicuous
37 notice of the passenger’s right to make a claim on the plan. That
38 notice shall include a description of the losses covered, the method
39 for making a claim, the time limit within which the claim shall be
40 made, and the amount that may be claimed.

(10) If the seller of travel is not a participant, a clear and conspicuous disclosure that the seller of travel is not a participant in the Travel Consumer Restitution Fund. That disclosure shall be made both orally and in writing.

(11) If the seller of travel ~~has its principal place of business in California~~ *is a participant in the Travel Consumer Restitution Fund* and the passenger is located outside California, a clear and conspicuous disclosure that the transaction is not covered by the Travel Consumer Restitution Fund. That disclosure shall be made both orally and in writing.

(b) If a seller of travel offers, sells, provides, or distributes a travel certificate as defined in Section 17550.10 and any passenger payment is nonrefundable, in whole or in part, the seller of travel shall obtain the written acknowledgment of that limitation from the end user prior to, or at the time of, receipt of any money or other valuable consideration.

(c) Notwithstanding any other provision of this section, if money or other valuable consideration is received from a customer to whom the seller of travel has sold air or sea transportation within the preceding 12 months *and the disclosures required by this section are substantially the same as the disclosures given in connection with the prior travel*, the disclosures required by this section shall be made within five days of receipt of that money or other valuable consideration.

(d) Notwithstanding any other provision of this section, if money or other valuable consideration is received in payment for air transportation and (1) the seller of travel is an officially appointed agent in good standing of the Airlines Reporting Corporation and (2) the seller of travel forwards the amount paid, without offsetting or reducing the amount forwarded by any amounts due or claimed in connection with any other transaction, to the airline providing the transportation or to the Airlines Reporting Corporation, the disclosures required by this section with respect to that air transportation may be made orally.

SEC. 3. Section 17550.20 of the Business and Professions Code is amended to read:

17550.20. (a) Not less than 10 days prior to doing business in this state, a seller of travel shall apply for registration with the office of the Attorney General by filing with the Consumer Law Section the information required by Section 17550.21 and a filing

1 fee of one hundred dollars (\$100) for each location from which the
2 seller of travel conducts business. A late fee of five dollars (\$5) per
3 day, up to a maximum of five hundred dollars (\$500), shall be paid
4 for each day after the time specified by this section until the filing
5 fee and the information required by Section 17550.21 are received.
6 No registration shall be issued or approved until the late fee ~~has~~,
7 *and the filing and late fees for each year the seller of travel*
8 *operated without being registered, have* been paid. A seller of
9 travel shall be deemed to do business in this state if the seller of
10 travel solicits business from locations in this state or solicits
11 prospective purchasers who are located in this state.

12 (b) Registration shall be valid for one year from the effective
13 date thereof shown on the registration issued by the office of the
14 Attorney General and may be annually renewed by making the
15 filing required by Section 17550.21 and paying a filing fee of one
16 hundred dollars (\$100) for each location from which the seller of
17 travel conducts business. A late fee of five dollars (\$5) per day, up
18 to a maximum of five hundred dollars (\$500), shall be paid for
19 each day after the time specified by this section until the filing fee
20 and the information required by Section 17550.21 are received. No
21 registration shall be renewed until the late fee ~~has~~, *and the filing*
22 *and late fees for each year the seller of travel operated without*
23 *being registered, have* been paid been paid.

24 (c) Whenever, prior to expiration of a seller of travel's annual
25 registration, there is a material change in the information required
26 by Section 17550.21, the seller of travel shall, within 10 days, file
27 an addendum updating the information with the Consumer Law
28 Section of the office of the Attorney General.

29 (d) (1) Not less than 10 days prior to the transfer or sale of any
30 interest in a seller of travel, the selling or transferring owner shall
31 file with the office of the Attorney General, Seller of Travel
32 Program, a notice of encumbrance, sale, or transfer of ownership,
33 using a form provided for that purpose by the office of Attorney
34 General. The notice shall provide the information required
35 pursuant to subdivision (d) of Section 17550.21 as to each
36 transferee.

37 (2) Until the time the notice of encumbrance, sale, or transfer
38 of ownership required in paragraph (1) is filed as required, the
39 selling, encumbering, or transferring owner is responsible for all
40 acts of and obligations imposed by law on the transferee sellers of



1 travel to the same extent as they would have been responsible had
2 there been no transfer, sale, or encumbrance.

3 (e) The office of the Attorney General shall suspend the
4 registration of any seller of travel who (1) fails to make any
5 payment required pursuant to Article 2.7 (commencing with
6 Section 17550.35) or (2) submits a check in payment of a
7 registration fee or late fee required by this section that is not
8 honored by the institution on which it is drawn. *The Attorney*
9 *General shall provide written notice to the seller of travel by*
10 *first-class mail at the seller of travel's place of business set forth*
11 *in the registration statement that the seller of travel's registration*
12 *has been suspended until all fees that are due have been paid.* The
13 registration of the seller of travel shall be suspended until all such
14 payments due have been collected.

15 (f) The Attorney General may, at his or her discretion and
16 subject to supervision by the Attorney General or his or her
17 delegate, contract out all or any part of the processing of
18 registrations required by this section.

19 (g) This section does not apply to an individual, natural person
20 who meets all of the following conditions:

21 (1) Has a written contract with a registered seller of travel to act
22 on that registered seller of travel's behalf in offering or selling air
23 or sea transportation and other travel goods or services in
24 connection with the transportation.

25 (2) Acts only on behalf of a registered seller of travel with
26 whom the person has a written contract in the offer or sale to a
27 passenger of air or sea transportation and other goods or services
28 in connection with the transportation and sells no other air or sea
29 transportation or travel services to that passenger.

30 (3) Provides air or sea transportation or travel services that are
31 offered or sold pursuant to the official agency appointment of the
32 registered seller of travel with whom the person has a written
33 contract.

34 (4) Does not receive any consideration for air or sea
35 transportation or other travel services from the passenger.

36 (5) Requires the passenger to pay all consideration for air or sea
37 transportation or other travel services directly to the air carrier or
38 ocean carrier or to the registered seller of travel.

39 (h) Whenever the Attorney General determines that a
40 registration application is accurate and complete, the application

1 shall be processed and a registration certificate shall be issued to
2 the seller of travel within 21 days.

3 SEC. 4. Section 17550.21 of the Business and Professions
4 Code is amended to read:

5 17550.21. Each filing pursuant to Section 17550.20 shall
6 contain the following information:

7 (a) The name or names of the seller of travel, including the
8 name under which the seller of travel is doing or intends to do
9 business, if different from the name of the seller of travel ~~and a~~
10 ~~copy of the current fictitious business statement filed with the~~
11 ~~responsible governmental entity, whenever a filing is required by~~
12 ~~law.~~

13 (b) The seller of travel's business form and place of
14 organization and, if operating under a fictitious business name, the
15 location where the fictitious name has been registered. *If the seller*
16 *of travel does business in California from one or more locations in*
17 *this state but does not maintain its principal place of business in*
18 *this state, the seller of travel shall state whether it meets the*
19 *requirements of paragraph (16) of subdivision (e) of Section*
20 *17511.1.*

21 (c) The complete street address or addresses of all locations
22 from which the seller of travel will be conducting business,
23 including, but not limited to, locations at which telephone calls
24 will be received from, or made to, passengers or other sellers of
25 travel. The statement shall designate which location is the
26 principal place of business.

27 (d) ~~The complete business and residential address, the business~~
28 ~~addresses and telephone number numbers,~~ the driver's license
29 number and state of issuance or equivalent personal identification,
30 *the social security number,* and the date of birth of each owner and
31 principal of the seller of travel. "Owner" means a person who
32 owns or controls 10 percent or more of the equity of, or otherwise
33 has claim to 10 percent or more of the net income of, a seller of
34 travel. "Principal" means an owner, an officer of a corporation,
35 a general partner of a partnership, or a sole proprietor of a sole
36 proprietorship.

37 (e) A statement as to whether the seller of travel, any owner, or
38 principal, or any other seller of travel owned or managed by any
39 owner or principal of the seller of travel, or the seller of travel itself
40 has had entered against that person or entity any judgment,

1 including a stipulated judgment, order, made a plea of nolo
2 contendere, or been convicted of any criminal violation. The
3 statement shall identify the person, the court or administrative
4 agency rendering the judgment, order, or conviction, the docket
5 number of the matter, and the date of the judgment, order, or
6 conviction; where the judgment, order, or record of conviction is
7 filed; and the nature of the case or judgment. This subdivision does
8 not require disclosure of marital dissolution, child support, or child
9 custody proceedings.

10 (f) A copy of the travel certificates, if any, that are or will be
11 sold, marketed, or distributed to any person or entity by the seller
12 of travel.

13 (g) The seller of travel shall file with the Attorney General a
14 signed and dated statement indicating (1) the account number of
15 each trust account required by this article, (2) the name and address
16 of each financial institution at which the seller of travel maintains
17 a trust account required by this article, (3) any registration number
18 issued to the seller of travel by the Airline Reporting Corporation
19 or the International Association of Travel Agents Network, and (4)
20 a consent form consenting to the Attorney General, a district
21 attorney, or their representatives obtaining directly from the
22 Airlines Reporting Corporation, International Association of
23 Travel Agents Network, a seller of transportation, provider of
24 transportation, ~~or~~ provider of travel services, *and any financial*
25 *institution where passenger funds have been deposited*, any
26 information related to an investigation of a seller of travel's
27 compliance with this section. The consent form shall be provided
28 by the Attorney General. If a bond is maintained in lieu of the trust
29 account, a copy of that bond shall be filed with the Attorney
30 General.

31 (h) A statement signed by each owner and principal granting
32 permission to the office of the Attorney General to obtain from any
33 financial institution or credit union at which any trust account
34 required by Section 17550.15 is maintained, information relating
35 to that trust account, as set forth in paragraph (2) of subdivision (f)
36 of Section 17550.15.

37 (i) *The name, address, and telephone number of each person*
38 *described in subdivision (g) of Section 17550.20 with whom the*
39 *seller of travel contracts.*



(j) The information required by this section shall be verified by a declaration signed *and dated* by each owner and principal of the seller of travel, or in the case of a registered seller of travel that does business in California, from one or more locations in California, and that meets the requirements of paragraph (16) of subdivision (e) of Section 17511.1, by a duly authorized officer of the corporation, under penalty of perjury pursuant to the laws of the State of California. The declaration shall specify the date and location of signing. Upon reregistration by a previously registered seller of travel, the information required by this section may be verified by the chief executive officer of a corporation, managing partner of a partnership, or manager of a limited liability company.

SEC. 5. Section 17550.47 of the Business and Professions Code is amended to read:

17550.47. (a) (1) Any person aggrieved who suffers a loss of more than fifty dollars (\$50) of amounts paid for air or sea transportation or travel services may file a claim with the Travel Consumer Restitution Corporation by filing a claim form as required by Section 17550.46 and paying, by check or money order, a processing fee to the Travel Consumer Restitution Corporation in the amount of thirty-five dollars (\$35). Any check for the processing fee that is returned unpaid to the corporation by the financial institution upon which it is drawn shall be returned to the claimant and the claim shall be rejected for filing. Any claimant whose claim is rejected may resubmit his or her claim upon payment of a processing fee of fifty dollars (\$50).

(2) Any processing fee required by paragraph (1) shall be nonrefundable except where (A) a claim is denied on the basis as set forth in the statement of decision that either the seller of travel, at the time of sale, was not a participant in the Travel Consumer Restitution Fund or the seller of travel was not registered, or (B) the claim is granted in whole or in part. In either case, the processing fee shall be refunded to the person aggrieved upon denial or upon payment of the claim, whichever is applicable.

(3) In no event shall a person aggrieved have more than six months after the scheduled date of completion of travel within which to file a claim with the Travel Consumer Restitution Fund.

(b) A person aggrieved may recover from the Travel Consumer Restitution Fund an amount not to exceed fifteen thousand dollars (\$15,000) per person aggrieved, not to exceed the amount paid to

1 the participant by or on behalf of the person aggrieved for the
2 transportation or travel services. Payments from the restitution
3 fund shall be limited to restitution for sums paid for transportation
4 or travel services and shall not include any other amounts,
5 including, but not limited to, payment for lost wages, pain and
6 suffering, emotional distress, travel insurance, lost luggage, or any
7 consequential damages. The person aggrieved shall not be entitled
8 to receive attorney's fees in connection with a filed claim or on
9 appeal.

10 (c) All claims are to be decided on the written record before the
11 corporation, with no hearing to be held. The record shall consist
12 of a fully executed and complete claim form, any other
13 documentation submitted by the claimant or the participant, and
14 any documents or reports submitted by staff or the designated
15 representative of the office of the Attorney General. Claims are to
16 be decided within 45 days of receipt unless (1) the designated
17 representative of the office of the Attorney General requests a
18 continuance to obtain and submit information, or (2) the Travel
19 Consumer Restitution Corporation determines that additional
20 information or documentation is required to decide the claim. In
21 either case, the claim shall be decided within 45 days of receipt of
22 all additional information or documentation. A claim not decided
23 timely shall be deemed granted.

24 (d) Whenever the Travel Consumer Restitution Corporation
25 denies a claim in whole or in part, it shall provide to the claimant
26 a written statement of decision setting forth the factual and legal
27 basis for the denial.

28 (e) A claimant may request reconsideration of an adverse
29 decision of the Travel Consumer Restitution Corporation by
30 mailing a written request, accompanied by a processing fee of fifty
31 dollars (\$50) paid by check or money order, within 20 days of the
32 date a notice of denial and statement of decision was mailed to the
33 claimant. Any check for the processing fee that is returned unpaid
34 to the Travel Consumer Restitution Corporation by the financial
35 institution upon which it is drawn shall be returned to the claimant
36 and the request for reconsideration shall not be determined until
37 the claimant has paid the fifty dollars (\$50) processing fee.

38 (f) The Travel Consumer Restitution Corporation shall, within
39 60 days of receipt of the request, either decide the request or advise
40 the claimant that additional information or documentation is

needed, and if the decision is a denial in whole or in part, it shall provide to the claimant and seller of travel a written statement of decision setting forth the factual and legal basis for the decision. No appeal may be taken pursuant to subdivision (g) until reconsideration has been requested and decided. The claimant shall not be entitled to any attorney's fees incurred in connection with presentation of a claim or request for reconsideration.

(g) No decision of the Travel Consumer Restitution Corporation granting or denying a claim in whole or part shall be subject to review or appeal except as provided in this section. A claimant may seek review of the denial, in whole or part, of a claim by filing a notice of appeal after having served the notice by mail on the Travel Consumer Restitution Corporation. The notice of appeal shall be filed and served on the Travel Consumer Restitution Corporation not later than 30 days after a written statement of decision on a request for reconsideration has been mailed to the claimant. The notice of appeal from a decision of the Travel Consumer Restitution Corporation shall be filed with the clerk of the superior court either in the county in which the principal place of business of the Travel Consumer Restitution Corporation is located, or in the county in which the claimant was a resident at the time the claimant purchased the transportation or travel services in dispute.

(h) The claimant shall pay the same filing fee as is required for appeals from small claims court. The Travel Consumer Restitution Corporation shall file its response and the record of the claim before the corporation with the clerk of the superior court within 30 days of the day the notice of appeal was served on the Travel Consumer Restitution Corporation.

(i) Upon the filing of the record the clerk of the court shall schedule a hearing for the earliest available time and shall mail written notice of the hearing at least 14 days prior to the time set for the hearing.

(j) The hearing on appeal shall be limited to the record before the Travel Consumer Restitution Corporation and any relevant evidence that could not have been with reasonable diligence submitted previously to the corporation. The reviewing court shall ~~apply a preponderance of the evidence standard of review~~ *affirm the decision if it is supported by substantial evidence in light of the entire record.* The pretrial discovery procedures described in

1 subdivision (a) of Section 2019 of the Code of Civil Procedure are
2 not permitted, there is no right to trial by jury, and the decision of
3 the superior court shall be appealable by either party. No money
4 may be claimed from or paid by the Travel Consumer Restitution
5 Fund except in accordance with the provisions and procedures set
6 forth in this article. No provision herein shall limit or otherwise
7 affect those remedies as may be available against persons or
8 entities other than the Travel Consumer Restitution Corporation.

9 (k) If the claimant prevails in whole or in part on an appeal, the
10 claimant shall not be entitled to an award in excess of the amount
11 of the original claim.

12 (l) Any claim awarded by the corporation shall be paid
13 promptly by the trustee of the restitution fund when the time for
14 appeal has passed. Any judgment on appeal shall be paid promptly
15 by the trustee of the restitution fund whenever the judgment
16 becomes final. If there should be insufficient funds to pay a claim
17 when otherwise due, claims shall be paid in the order received. If
18 the Travel Consumer Restitution Corporation ceases to operate
19 pursuant to the terms of Section 17550.52, any remaining trust
20 funds shall be allocated on a pro rata basis to claims accruing prior
21 to the corporation ceasing to operate, after payment of outstanding
22 debts and liabilities as provided in Section 17550.57.

23 (m) A claim shall require a majority of at least three affirmative
24 votes for denial, otherwise it shall be deemed granted.

25 SEC. 6. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.

